

APPEAL NO. 010139

Following a contested case hearing held on December 6, 2000, pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issues by deciding:

1. The appellant (claimant herein) did not sustain a compensable injury on _____.
2. The claimant did not have disability.

The claimant appeals, arguing that the evidence did establish he suffered an injury on _____. The respondent (carrier herein) replies that the hearing officer's findings are sufficiently supported by the evidence.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

This case turns on whether the claimant suffered a new compensable injury on _____, or is suffering a continuation of the injury he previously suffered in _____. This is an issue of fact. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. The fact that the claimant suffered a new injury is supported by the testimony of the claimant as well as medical reports from Dr. B and Dr. M. Dr. S, the carrier's peer review doctor, expresses the opinion that the claimant is suffering from a continuation of his _____ injury, and not a new injury. It was the province of the hearing officer to resolve any conflicting evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). The question under our standard of review was whether the hearing officer's determinations were so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Applying this standard, we find sufficient evidence to support the hearing officer's decision.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Elaine M. Chaney
Appeals Judge

Philip F. O'Neill
Appeals Judge